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HOUSE BILL 227

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO DOMESTIC ABUSE; EXPANDING AND CLARIFYING  
DEFINITIONS; GRANTING FREE PROCESS TO VICTIMS; PROVIDING FOR  
MUTUAL ORDERS OF PROTECTION; PROVIDING LIMITS ON INTERNET  
PUBLICATION; CLARIFYING PROVISIONS OF THE FAMILY VIOLENCE  
PROTECTION ACT; AMENDING AND ENACTING SECTIONS OF THE FAMILY  
VIOLENCE PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-1-15 NMSA 1978 (being Laws 2002,  
Chapter 34, Section 1 and Laws 2002, Chapter 35, Section 1) is  
amended to read:

"30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR  
SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

A. An alleged victim of an offense specified in  
Subsection B of this section is not required to bear the cost

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1 of:

2 (1) the prosecution of a misdemeanor or felony  
3 domestic violence offense, including costs associated with  
4 filing a criminal charge against an alleged perpetrator of the  
5 offense;

6 (2) the filing, issuance or service of a  
7 warrant;

8 (3) the filing, issuance or service of a  
9 witness subpoena; or

10 (4) the filing, issuance, registration or  
11 service of a protection order.

12 B. The provisions of Subsection A of this section  
13 apply to:

14 (1) alleged victims of domestic abuse as  
15 defined in Section 40-13-2 NMSA 1978; ~~[and:~~

16 ~~(1)]~~ (2) sexual offenses described in Sections  
17 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

18 ~~[(2)]~~ (3) crimes against household members  
19 described in Sections 30-3-12 through 30-3-16 NMSA 1978;

20 ~~[(3)]~~ (4) harassment, stalking and aggravated  
21 stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA  
22 1978; and

23 ~~[(4)]~~ (5) the violation of an order of  
24 protection ~~[described in Subsection E of Section 40-13-6 NMSA~~  
25 ~~1978]~~ that is issued pursuant to the Family Violence Protection

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1 Act or entitled to full faith and credit."

2 Section 2. Section 40-13-2 NMSA 1978 (being Laws 1987,  
3 Chapter 286, Section 2, as amended) is amended to read:

4 "40-13-2. DEFINITIONS.--As used in the Family Violence  
5 Protection Act:

6 A. "co-parents" means persons who have a child in  
7 common, regardless of whether they have been married or have  
8 lived together at any time;

9 B. "court" means the district court of the judicial  
10 district where an alleged victim of domestic abuse resides or  
11 is found;

12 C. "domestic abuse":

13 (1) means an incident of stalking,  
14 cyberstalking or sexual assault whether committed by a  
15 household member or not;

16 (2) means [any] an incident by a household  
17 member against another household member consisting of or  
18 resulting in:

- 19 [~~1~~] (a) physical harm;
- 20 [~~2~~] (b) severe emotional distress;
- 21 [~~3~~] (c) bodily injury or assault;
- 22 [~~4~~] (d) a threat causing imminent fear  
23 of bodily injury by any household member;
- 24 [~~5~~] (e) criminal trespass;
- 25 [~~6~~] (f) criminal damage to property;

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1                    [~~(7)~~] (g) repeatedly driving by a  
2 residence or work place;  
3                    [~~(8)~~] (h) telephone harassment;  
4                    [~~(9)~~] ~~stalking~~;  
5                    [~~(10)~~] (i) harassment; or  
6                    [~~(11)~~] (j) harm or threatened harm to  
7 children as set forth in [~~the paragraphs of this subsection~~]  
8 this paragraph; and

9                    (3) does not mean the use of force in self-  
10 defense or the defense of another;

11                    D. "household member" means a spouse; former  
12 spouse; family member, including a relative, parent, present or  
13 former stepparent, present or former in-law, child or co-parent  
14 of a child; or a person with whom the petitioner has had a  
15 continuing personal relationship. Cohabitation is not  
16 necessary to be deemed a household member for purposes of this  
17 section; [~~and~~]

18                    E. "mutual order of protection" means an order of  
19 protection that includes provisions that protect both parties;

20                    [~~E.~~] F. "order of protection" means [a] an  
21 injunction, restraining or other court order granted for the  
22 protection of [victims] a victim of domestic abuse;

23                    G. "protected party" means a person protected by an  
24 order of protection; and

25                    H. "restrained party" means a person who is

1 restrained by an order of protection."

2 Section 3. Section 40-13-3 NMSA 1978 (being Laws 1987,  
3 Chapter 286, Section 3, as amended) is amended to read:

4 "40-13-3. PETITION FOR ORDER OF PROTECTION--CONTENTS  
5 [~~INDIGENT PETITIONERS~~]~~--STANDARD FORMS.--~~

6 A. A victim of domestic abuse may petition the  
7 court under the Family Violence Protection Act for an order of  
8 protection.

9 B. The petition shall be made under oath or shall  
10 be accompanied by a sworn affidavit setting out specific facts  
11 showing the alleged domestic abuse.

12 C. The petition shall state whether any other  
13 domestic action is pending between the petitioner and the  
14 respondent.

15 D. If any other domestic action is pending between  
16 the petitioner and the respondent, the parties shall not be  
17 compelled to mediate any aspect of the case arising from the  
18 Family Violence Protection Act unless the court finds that  
19 appropriate safeguards exist to protect each of the parties and  
20 that both parties can fairly mediate with such safeguards.

21 E. [~~Any~~] An action brought under [~~that~~] the Family  
22 Violence Protection Act is independent of any proceeding for  
23 annulment, separation or divorce between the [~~petitioner and~~  
24 ~~the respondent~~] parties.

25 F. [~~Any~~] Remedies granted pursuant to the Family

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1 Violence Protection Act are in addition to and shall not limit  
2 other [~~available~~] civil or criminal remedies available to the  
3 parties.

4 ~~[G. If the petition is accompanied by an affidavit~~  
5 ~~showing that the petitioner is unable to pay the costs of the~~  
6 ~~proceeding, the court may order that the petitioner be~~  
7 ~~permitted to proceed as an indigent without payment of court~~  
8 ~~costs. In determining the financial status of the petitioner~~  
9 ~~for the purpose of this subsection, the income of the~~  
10 ~~respondent shall not be considered.~~

11 H.] G. Standard simplified petition forms with  
12 instructions for completion shall be available to [~~petitioners~~  
13 ~~not represented by counsel~~] all parties. Law enforcement  
14 agencies shall keep such forms and make them available upon  
15 request to alleged victims of domestic [~~violence~~] abuse."

16 Section 4. Section 40-13-3.1 NMSA 1978 (being Laws 1995,  
17 Chapter 176, Section 1) is amended to read:

18 "40-13-3.1. FORBEARANCE OF COSTS [~~OF CRIMINAL PROCESSES~~]  
19 ASSOCIATED WITH DOMESTIC ABUSE OFFENSES.--An alleged victim of  
20 domestic abuse shall not be required to bear the cost of:

21 A. the prosecution of a misdemeanor or felony  
22 offense arising out of an incident of domestic abuse, including  
23 costs associated with filing a criminal charge against [an] the  
24 alleged [abusing household member] perpetrator of the abuse;

25 B. the filing, issuance or service of a warrant;

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1 C. the filing, issuance or service of a witness  
2 subpoena; [~~o~~]

3 D. witness fees, excluding expert witness fees;

4 E. the filing, issuance or service of a petition  
5 for an order of protection;

6 [~~D.~~] F. the filing, issuance or service of [~~a~~] an  
7 order of protection [~~order~~]; or

8 G. obtaining law enforcement reports relating to  
9 the alleged abuse or pattern of abuse."

10 Section 5. Section 40-13-3.2 NMSA 1978 (being Laws 1999,  
11 Chapter 142, Section 2) is amended to read:

12 "40-13-3.2. EX PARTE EMERGENCY ORDERS OF PROTECTION.--

13 A. The district court may issue an ex parte written  
14 emergency order of protection when a law enforcement officer  
15 states to the court in person, by telephone or via facsimile  
16 and files a sworn written statement, setting forth the need for  
17 an emergency order of protection, and the court finds  
18 reasonable grounds to believe that the [~~petitioner~~] alleged  
19 victim or the [~~petitioner's~~] alleged victim's child is in  
20 immediate danger of domestic abuse following an incident of  
21 domestic abuse [~~by a household member~~]. The written statement  
22 shall include the location and telephone number of the  
23 [~~respondent~~] alleged perpetrator, if known.

24 B. A law enforcement officer who receives an  
25 emergency order of protection, whether in writing, by telephone

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1 or by facsimile transmission, from the court shall:

2 (1) if necessary, pursuant to the judge's [~~or~~  
3 ~~judicial officer's~~] oral approval, write and sign the order on  
4 an approved form;

5 (2) if possible, immediately serve a signed  
6 copy of the order on the [~~respondent~~] restrained party and  
7 complete the appropriate affidavit of service;

8 (3) immediately provide the [~~petitioner~~]  
9 protected party with a signed copy of the order; and

10 (4) provide the original order to the court by  
11 the close of business on the next judicial day.

12 C. The court may grant the following relief in an  
13 emergency order [~~for~~] of protection upon a probable cause  
14 finding that domestic abuse has occurred:

15 (1) enjoin the [~~respondent~~] restrained party  
16 from threatening to commit or committing acts of domestic abuse  
17 against the [~~petitioner~~] protected party or any designated  
18 household members;

19 (2) enjoin the [~~respondent~~] restrained party  
20 from any contact with the [~~petitioner~~] protected party,  
21 including harassing, telephoning, contacting or otherwise  
22 communicating with the [~~petitioner~~] protected party; and

23 (3) grant temporary custody of any minor child  
24 in common with the [~~petitioner and the respondent to the~~  
25 ~~petitioner~~] parties to the protected party, if necessary.

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1           D. A district judge shall be available as  
2 determined by each judicial district to hear petitions for  
3 emergency orders of protection.

4           E. An emergency order of protection expires  
5 seventy-two hours after issuance or at the end of the next  
6 judicial day, whichever time is latest. The expiration date  
7 shall be clearly stated on the emergency order of protection.

8           F. A person may appeal the issuance of an emergency  
9 order of protection to the court that issued the order. An  
10 appeal may be heard as soon as the judicial day following the  
11 issuance of the order.

12           G. Upon a proper petition, a district court may  
13 issue a temporary order of protection that is based upon the  
14 same incident of domestic abuse that was alleged in an  
15 emergency order of protection.

16           H. Emergency orders of protection are enforceable  
17 in the same manner as other orders of protection [~~that are~~]  
18 issued pursuant to the provisions of the Family Violence  
19 Protection Act."

20           Section 6. Section 40-13-4 NMSA 1978 (being Laws 1987,  
21 Chapter 286, Section 4) is amended to read:

22           "40-13-4. TEMPORARY ORDER OF PROTECTION--HEARING--  
23 DISMISSAL.--

24           A. Upon the filing of a petition for order of  
25 protection, the court shall:

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1           ~~[A-]~~ (1) immediately grant an ex parte  
2 temporary order of protection without bond if there is probable  
3 cause from the specific facts shown by the affidavit or by the  
4 petition to give the judge reason to believe that an act of  
5 domestic abuse has occurred;

6           ~~[B-]~~ (2) cause the temporary order of  
7 protection together with notice of hearing to be served  
8 immediately on the alleged perpetrator of the domestic abuse;  
9 and

10           ~~[C-]~~ (3) within ten days after the granting of  
11 the temporary order of protection, hold a hearing on the  
12 question of continuing the order; or

13           ~~[D-]~~ (4) if an ex parte order is not granted,  
14 serve notice to appear upon the parties and hold a hearing on  
15 the petition for order of protection within seventy-two hours  
16 after the filing of the petition; provided if notice of hearing  
17 cannot be served within seventy-two hours, the temporary order  
18 of protection shall be automatically extended for ten days.

19           B. Except for petitions alleging stalking,  
20 cyberstalking or sexual assault, if the court finds that the  
21 alleged perpetrator is not a household member, the court may  
22 dismiss the petition."

23           Section 7. Section 40-13-5 NMSA 1978 (being Laws 1987,  
24 Chapter 286, Section 5, as amended) is amended to read:

25           "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE  
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1 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

2 A. Upon finding that domestic abuse has occurred or  
3 upon stipulation of the parties, the court shall enter an order  
4 of protection ordering the [~~respondent~~] restrained party to  
5 refrain from abusing the [~~petitioner~~] protected party or any  
6 other household member. The court shall specifically describe  
7 the acts the court has ordered the [~~respondent~~] restrained  
8 party to do or refrain from doing. As a part of any order of  
9 protection, the court may:

10 (1) grant sole possession of the residence or  
11 household to the [~~petitioner~~] protected party during the period  
12 the order of protection is effective or order the [~~respondent~~]  
13 restrained party to provide temporary suitable alternative  
14 housing for the [~~petitioner~~] protected party and any children  
15 to whom the [~~respondent~~] restrained party owes a legal  
16 obligation of support;

17 (2) award temporary custody of any children  
18 involved when appropriate and provide for visitation rights,  
19 child support and temporary support for the [~~petitioner~~]  
20 protected party on a basis that gives primary consideration to  
21 the safety of the [~~victim~~] protected party and the children;

22 (3) order that the [~~respondent~~] restrained  
23 party shall not initiate contact with the [~~petitioner~~]  
24 protected party;

25 (4) restrain [~~the parties~~] a party from

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1 transferring, concealing, encumbering or otherwise disposing of  
2 the [~~petitioner's~~] other party's property or the joint property  
3 of the parties except in the usual course of business or for  
4 the necessities of life and require the parties to account to  
5 the court for all such transferences, encumbrances and  
6 expenditures made after the order is served or communicated to  
7 the restrained party [~~restrained in court~~];

8 (5) order the [~~respondent~~] restrained party to  
9 reimburse the [~~petitioner~~] protected party or any other  
10 household member for expenses reasonably related to the  
11 occurrence of domestic abuse, including medical expenses,  
12 counseling expenses, the expense of seeking temporary shelter,  
13 expenses for the replacement or repair of damaged property or  
14 the expense of lost wages;

15 (6) order the [~~respondent~~] restrained party to  
16 participate in, at the [~~respondent's~~] restrained party's  
17 expense, professional counseling programs deemed appropriate by  
18 the court, including counseling programs for perpetrators of  
19 domestic abuse, alcohol abuse or abuse of controlled  
20 substances; and

21 (7) order other injunctive relief as the court  
22 deems necessary for the protection of [~~the petitioner~~] a party,  
23 including orders to law enforcement agencies as provided by  
24 this section.

25 B. The order of protection shall contain a notice

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1 that violation of any provision of the order constitutes  
2 contempt of court and may result in a fine or imprisonment or  
3 both.

4 C. If the order of protection supersedes or alters  
5 prior orders of the court pertaining to domestic matters  
6 between the parties, the order shall say so on its face. If an  
7 action relating to child custody or child support is pending or  
8 has concluded with entry of an order at the time the petition  
9 for an order of protection was filed, the court may enter an  
10 initial order of protection, but the portion of the order  
11 dealing with child custody or child support will then be  
12 transferred to the court that has or continues to have  
13 jurisdiction over the pending or prior custody or support  
14 action.

15 D. A mutual order of protection shall be issued  
16 only in cases where both parties have petitioned the court and  
17 the court makes detailed findings of fact indicating that both  
18 parties acted primarily as aggressors and that neither party  
19 acted primarily in self-defense.

20 [~~D.~~] E. No order issued under the Family Violence  
21 Protection Act shall affect title to any property or allow [~~the~~  
22 ~~petitioner~~] a party to transfer, conceal, encumber or otherwise  
23 dispose of [~~the respondent's~~] another party's property or the  
24 joint or community property of the parties.

25 [~~E.~~] F. Either party may request a review hearing

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1 to amend ~~[the]~~ an order of protection. An order of protection  
2 involving child custody or support may be modified without  
3 proof of a substantial or material change of circumstances.

4 G. An order of protection shall not be issued  
5 unless a petition or a counter petition has been filed."

6 Section 8. Section 40-13-6 NMSA 1978 (being Laws 1987,  
7 Chapter 286, Section 6, as amended) is amended to read:

8 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES  
9 NOT EXCLUSIVE.--

10 A. An order of protection granted under the Family  
11 Violence Protection Act shall be filed with the clerk of the  
12 court, and a copy shall be sent by the clerk to the local law  
13 enforcement agency. The order shall be personally served upon  
14 the ~~[respondent]~~ restrained party, unless the ~~[respondent]~~  
15 restrained party or the ~~[respondent's]~~ restrained party's  
16 attorney was present at the time the order was issued. The  
17 order shall be filed and served without cost to the  
18 ~~[petitioner]~~ protected party.

19 B. ~~[The]~~ A local law enforcement agency receiving  
20 an order of protection from the clerk of the court that was  
21 issued under the Family Violence Protection Act shall have the  
22 order entered in the national crime information center's order  
23 of protection file within seventy-two hours of receipt. This  
24 does not include temporary orders of protection ~~[under]~~ entered  
25 pursuant to the provisions of Section 40-13-4 NMSA 1978.

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1 C. An order of protection granted by the court  
2 involving custody or support shall be effective for a fixed  
3 period of time not to exceed six months. The order may be  
4 extended for good cause upon motion of the ~~[petitioner]~~  
5 protected party for an additional period of time not to exceed  
6 six months. Injunctive orders shall continue until modified or  
7 rescinded upon motion by either party or until the court  
8 approves a subsequent consent agreement entered into by the  
9 ~~[petitioner and the respondent]~~ parties.

10 D. A peace officer shall arrest without a warrant  
11 and take into custody a ~~[person]~~ restrained party whom the  
12 peace officer has probable cause to believe has violated an  
13 order ~~[pursuant to this section]~~ of protection that is issued  
14 pursuant to the Family Violence Protection Act or entitled to  
15 full faith and credit.

16 E. State courts shall give full faith and credit to  
17 tribal court orders of protection and orders of protection  
18 issued by courts of other states. A protection order issued by  
19 a state or tribal court against one who has petitioned, filed a  
20 complaint or otherwise filed a written pleading for protection  
21 against abuse by a spouse or intimate partner is not entitled  
22 to full faith and credit if:

23 (1) no cross or counter petition, complaint or  
24 other written pleading was filed seeking such a protection  
25 order; or

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1 (2) a cross or counter petition has been filed  
2 and the court did not make specific findings that each party  
3 was entitled to such an order.

4 F. A ~~[person]~~ restrained party convicted of  
5 violating an order of protection granted by a court under the  
6 Family Violence Protection Act is guilty of a misdemeanor and  
7 shall be sentenced in accordance with Section 31-19-1 NMSA  
8 1978. Upon a second or subsequent conviction, an offender  
9 shall be sentenced to a jail term of not less than seventy-two  
10 consecutive hours that shall not be suspended, deferred or  
11 taken under advisement.

12 G. In addition to any other punishment provided in  
13 the Family Violence Protection Act, the court shall order a  
14 person convicted to make full restitution to the party injured  
15 by the violation of an order of protection and shall order the  
16 person convicted to participate in and complete a program of  
17 professional counseling, at the person's own expense, if  
18 possible.

19 H. In addition to charging the person with  
20 violating an order of protection, a peace officer shall file  
21 all other possible criminal charges arising from an incident of  
22 domestic abuse when probable cause exists.

23 I. The remedies provided in the Family Violence  
24 Protection Act are in addition to any other civil or criminal  
25 remedy available to the ~~[petitioner]~~ protected party or the

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1 state."

2 Section 9. Section 40-13-7 NMSA 1978 (being Laws 1987,  
3 Chapter 286, Section 7, as amended) is amended to read:

4 "40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY  
5 ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO  
6 VICTIMS WHEN AN [~~ABUSING HOUSEHOLD MEMBER~~] ALLEGED PERPETRATOR  
7 IS RELEASED FROM DETENTION--STATEMENT IN JUDGMENT AND SENTENCE  
8 DOCUMENT.--

9 A. A person who allegedly has been a victim of  
10 domestic abuse may request the assistance of a local law  
11 enforcement agency.

12 B. A local law enforcement officer responding to  
13 the request for assistance shall be required to take whatever  
14 steps are reasonably necessary to protect the victim from  
15 further domestic abuse, including:

16 (1) advising the victim of the remedies  
17 available under the Family Violence Protection Act; the right  
18 to file a written statement, [~~or~~] a criminal complaint and a  
19 request for an arrest warrant; and the availability of domestic  
20 violence shelters, medical care, counseling and other services;

21 (2) upon the request of the [~~petitioner~~]  
22 victim, providing or arranging for transportation of the victim  
23 to a medical facility or place of shelter;

24 (3) upon the request of the [~~petitioner~~]  
25 victim, accompanying the victim to the victim's residence to

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1     ~~[remove]~~ obtain the victim's clothing and personal effects  
2     required for immediate needs and the clothing and personal  
3     effects of any children then in the care of the victim;

4                     (4) upon the request of the ~~[petitioner]~~  
5     victim, assist in placing the ~~[petitioner]~~ victim in possession  
6     of the dwelling or premises or otherwise assist in execution,  
7     enforcement or service of ~~[the]~~ an order of protection;

8                     (5) arresting the ~~[abusing household member]~~  
9     alleged perpetrator when appropriate and including a written  
10    statement in the attendant police report to indicate that the  
11    arrest of the ~~[abusing household member]~~ alleged perpetrator  
12    was, in whole or in part, premised upon probable cause to  
13    believe that the ~~[abusing household member]~~ alleged perpetrator  
14    committed domestic abuse against the victim and, when  
15    appropriate, indicate that the party arrested was the  
16    predominant aggressor; and

17                    (6) advising the victim when appropriate of  
18    the procedure for initiating proceedings under the Family  
19    Violence Protection Act or criminal proceedings and of the  
20    importance of preserving evidence.

21                    C. The jail or detention center shall make a  
22    reasonable attempt to notify the arresting law enforcement  
23    agency or officer when the ~~[abusing household member]~~ alleged  
24    perpetrator is released from custody. The arresting law  
25    enforcement agency shall make a reasonable attempt to notify

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1 the victim that the [~~abusing household member~~] alleged  
2 perpetrator is released from custody.

3 D. Any law enforcement officer responding to [~~the~~]  
4 a request for assistance under the Family Violence Protection  
5 Act is immune from civil liability to the extent allowed by  
6 law. Any jail, detention center or law enforcement agency that  
7 makes a reasonable attempt to provide notification that an  
8 [~~abusing household member~~] alleged perpetrator is released from  
9 custody is immune from civil liability to the extent allowed by  
10 law.

11 E. A statement shall be included in a judgment and  
12 sentence document to indicate when a conviction results from  
13 the commission of domestic abuse."

14 Section 10. A new section of the Family Violence  
15 Protection Act is enacted to read:

16 "[NEW MATERIAL] LIMITS ON INTERNET PUBLICATION.--A state  
17 agency, court or political subdivision of the state, including  
18 a magistrate or municipal court, judicial district, law  
19 enforcement agency, county, municipality or home-rule  
20 municipality, shall not make available publicly on the internet  
21 any information regarding the registration of, the filing of a  
22 petition for or the issuance of an order of protection,  
23 injunction or restraining order pursuant to the Family Violence  
24 Protection Act if such publication would be likely to reveal  
25 publicly the identity or location of the party protected under

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1 such an order. A state agency, court or political subdivision  
2 may share court-generated and law enforcement-generated  
3 information contained in secure, government registries for  
4 protection order enforcement purposes."

5 Section 11. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2008.

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